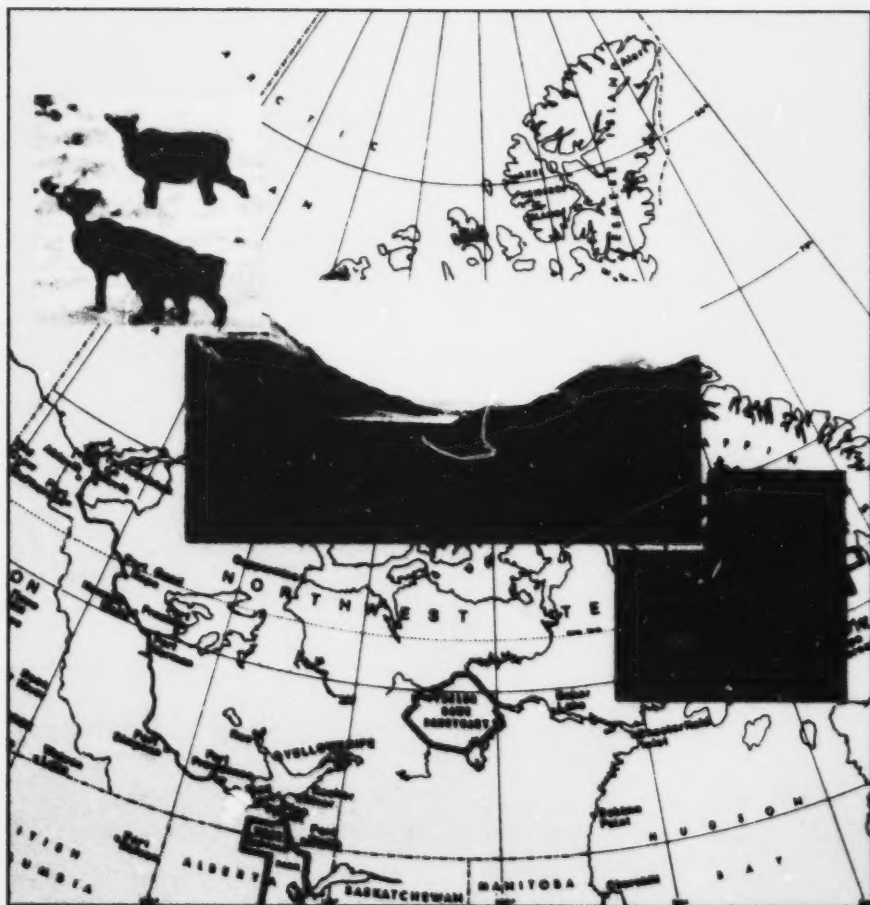


a mistaken goal

Gordon Robertson





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NORTHERN PROVINCES: A MISTAKEN GOAL



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GORDON ROBERTSON

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Printed in Canada

Legal Deposit Third Quarter
Bibliothèque nationale du Québec

Cover photos:
SSC - Photo Centre Library - ASC
George Hollo, Indian & Inuit Affairs

Canadian Cataloguing in Publication Data

Robertson, Gordon, 1917-
Northern Provinces

ISBN 0-88645-027-6

1. Northwest Territories—Politics and government
—1951- 2. Yukon Territory—Politics and
government—1953- I. Institute for Research
on Public Policy II. Title.

FC3693.R62 1985 971.9'03 C85-090199-5
F1090.5.R62 1985

The Institute for Research on Public Policy/
L'Institut de recherches politiques
2149 Mackay Street,
Montreal, Quebec H3G 2J2

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PREFACE

Early in 1985 I was invited to participate in a seminar on the evolution of northern government at the Banff School of Management. I was asked to discuss federal-provincial powers and relationships as a background against which the options for future political development in the Yukon and the Northwest Territories could be examined. Provincial status was one of those options. The subject brought together for me some thirty years of experience in government. There is danger that thirty years of "experience" may produce little but the deepened ruts of repetition and bias. I hope that is not the case in this instance. If there are ruts, it is not repetition that has produced them, for the experience in policy and administration ranges from the broadest issues to the most local.

From 1953 to 1963 I spent the most interesting years of my life as Commissioner of the Northwest Territories. I was fortunate to get to know virtually every community and every part of the one third of Canada it includes along with the Indian, Inuit, and Métis peoples who are its permanent population. The Commissioner of that day put Gilbert and Sullivan's Pooh-Bah to shame. The position comprised the duties of lieutenant governor, premier, and cabinet in one undivided whole. As Commissioner, I was also Speaker of the Council of the Northwest Territories and head of the administration. Because the territorial staff was small, I became involved in everything from liquor prices to school curricula to sewage disposal for communities in permafrost areas.

As a quite separate appointment, I was also Deputy Minister of what was then the Department of Northern Affairs and National Resources. The Minister and the department were responsible for the federal presence in the entire North and for the administration of all the lands and resources it contained, both on shore and off. In that role, I was able to gain some knowledge of the fascinating country that makes up the Yukon Territory. The whole experience produced an enduring interest in the North and great affection for its people.

In 1963 I became Secretary to the Cabinet of Canada and soon found that one of the most demanding tasks, but also one of the most interesting, was to

advise the Prime Minister of the day on federal-provincial relations. I got to know the premiers, ministers, and officials of the provinces over many years and in administrations of all political persuasions. The period of the 1960s became increasingly turbulent, especially because of the "Quiet Revolution" and later the rise of separatism in Quebec. The pressures led to the constitutional conferences that began in February 1968. The entire foundation of Canada came under review in an unprecedented exercise that could find no agreement or conclusion until the Federal-Provincial Conference of November 1981. The federal-provincial relationship went through minute examination and intense strain. No question went unasked, no option unconsidered. It was impossible not to become aware of virtually all shades of the complex human, political, and administrative relationship that makes up Canadian federalism.

During those thirty years much changed in the Canadian North. The geography remains barely touched: it is too vast to be greatly altered by so trifling a human presence—fewer than 70,000 people in some 40 per cent of Canada. The aboriginal people, Indian, Inuit, and Métis, have, however, acquired a growing understanding of the political process, a new awareness of their own identity and rights, and a strong determination to shape their lives and future. Pressures for political and social change have mounted. The non-native population has also become determined

to see complete self-government securely established in the North. It is those pressures that have given rise to a number of proposals for change in recent years and to much debate about the options for the future. In almost every proposal, the objective of provincial status has emerged, to be achieved within some time frame, for however many territories the coming years may see.

The paper I presented at Banff dealt with the assumption that the status of province is the objective for the North. What is the nature of "provincial status"? What does it imply? What would be the prospect of achieving it? Would it suit the territories—soon, late, or ever? The present study is an expansion of that paper. It includes material that will be obvious and perhaps even tedious to people in the North. I have included it, however, because understanding and policy judgement will at some point be necessary in the "South." My hope is that the comments here about some of the issues, based as much on personal judgement as on statistics, may be of assistance. The decisions that will have to be taken in the next few years will profoundly affect the future of people and lands of which most Canadians know very little. If those decisions are wisely taken they may help to produce political structures and social relationships in which the aboriginal people will feel their cultures and their values more secure than they are anywhere in Canada today. The wrong decisions could lead to

political or economic problems and to ethnic tensions that could prejudice our northern societies for years to come.

In preparing this study I have sought the comments of people with whom I have been associated in my work and experience in the North. I have profited greatly from their help and warmly thank them for it. I do, however, want to stress that the opinions and conclusions set out here are entirely my own. If there are any errors of fact, they too are mine.

Gordon Robertson

Past President and Fellow-in-Residence

June 1985



PRÉFACE

Au début de 1985, j'étais invité à participer à un séminaire sur l'évolution de l'administration du Nord à la Banff School of Management. On me demandait de prendre les rapports et les pouvoirs respectifs des États fédéral et provinciaux comme toile de fond sur laquelle on pourrait examiner les possibilités de développement politique pour le Yukon et les Territoires du Nord-Ouest. Le statut provincial était l'une de ces possibilités. Ce sujet résumait pour moi quelque trente années d'expérience de gouvernement. Trente années d'"expérience", cela présente un risque : celui de n'avoir guère que creusé les ornières de la répétition et des préjugés. J'espère que ce n'est pas le cas ici. Si ornières il y a, ce n'est pas la répétition qui les a creusées, car cette expérience politique et

administrative s'étend des questions les plus générales aux plus locales.

J'ai vécu les années les plus intéressantes de ma vie de 1953 à 1963, comme Commissaire aux Territoires du Nord-Ouest. J'ai eu la chance de visiter à peu près toutes les localités et régions de ce qui constitue le tiers de la superficie du Canada, et de faire la connaissance des Indiens, Inuit et Métis qui en forment la population permanente. Les attributions du Commissaire de cette époque auraient fait honte au Pooh-Bah¹ de Gilbert et Sullivan. Le poste réunissait en effet les fonctions de Lieutenant-Gouverneur, de Premier ministre et de cabinet en un tout indivis. En tant que Commissaire, j'étais aussi Orateur du Conseil des Territoires du Nord-Ouest et chef de l'administration. Comme je ne disposais que d'un personnel restreint, je me trouvais mêlé à toutes les affaires depuis le prix des alcools jusqu'aux programmes scolaires, en passant par l'évacuation des vidanges dans les collectivités des zones de pergélisol.

Je remplissais aussi une fonction tout à fait distincte, celle de sous-ministre de ce qui était alors le ministère du Nord canadien et des Ressources nationales. Ce département et son ministre étaient

¹ Personnage du *Mikado*, cumulant les fonctions bureaucratiques. (N.d.T.)

chargés d'assurer la présence fédérale dans l'ensemble du Nord et d'en administrer tout le territoire ainsi que toutes les ressources, aussi bien terrestres que côtières. Cette charge me permit d'acquérir une certaine connaissance de ce fascinant territoire qu'est le Yukon. L'ensemble de cette expérience engendra chez moi un intérêt durable pour le Nord et une grande affection pour ses habitants.

En 1963, je devins Secrétaire du Cabinet du Canada. Je m'aperçus vite que l'une de mes tâches les plus exigeantes, mais aussi l'une des plus intéressantes, était de conseiller le Premier ministre sur les relations fédérales-provinciales. J'appris à connaître les Premiers ministres, les ministres et les fonctionnaires provinciaux durant de longues années et dans des gouvernements de toutes les tendances politiques. Entre-temps la décennie se faisait de plus en plus tumultueuse, surtout du fait de la "Révolution tranquille" et plus tard, de la montée du séparatisme québécois. Ces tensions débouchèrent sur les conférences constitutionnelles, qui commencèrent en février 1968. L'ensemble des fondations du Canada fut alors soumis à un examen sans précédent qui ne put aboutir à aucun accord ou conclusion jusqu'à la Conférence fédérale-provinciale de novembre 1981. Les rapports entre le fédéral et les provinces furent ainsi étudiés dans les moindres détails et mis à rude épreuve. Il n'y eut pas une question que l'on se priva de poser, pas une possibilité que l'on omit d'envisager. Il

était impossible dans ce contexte de ne pas prendre conscience de pratiquement toutes les nuances des rapports complexes—humains, politiques et administratifs—qui constituent le fédéralisme canadien.

Au cours de ces trente années, beaucoup de choses ont changé dans le Nord canadien. La géographie reste à peu près la même : ces espaces sont trop vastes pour qu'une présence humaine si restreinte—moins de 70 000 habitants pour quelque 40 % de la superficie canadienne—puisse beaucoup les transformer. Cependant, les citoyens autochtones—Indiens, Inuit et Métis—ont acquis une meilleure compréhension du processus politique, une nouvelle conscience de leur propre identité et de leurs droits ainsi que la ferme volonté de façonner leur vie et leur avenir. Les pressions en vue du changement politique et social se sont faites plus vigoureuses. La population non autochtone s'est elle aussi résolument déterminée à voir l'autonomie complète solidement établie dans le Nord. Ce sont ces pressions qui ont donné naissance à un certain nombre de propositions de réforme au cours des dernières années et à un vaste débat sur les options qu'offre l'avenir. Dans presque toutes ces propositions s'est fait jour l'objectif du statut provincial, à atteindre dans tel ou tel délai, pour quelque nombre de territoires que l'avenir ait en réserve.

La communication que j'ai présentée à Banff était fondée sur le postulat que le statut provincial est l'objectif que vise le Nord. J'y posais les questions

suivantes : Quelle est la nature du "statut provincial"? Qu'est-ce qu'il implique? Quelles chances a-t-on de l'obtenir? Convviendrait-il aux territoires—tôt, tard ou jamais? La présente étude est le développement de cette communication. Elle contient des passages qui n'apprendront rien aux citoyens du Nord et peut-être même les ennueront. Je ne les ai pas omis toutefois parce que, à un moment ou l'autre, le "sud" devra comprendre la situation et porter un jugement politique. Mon espoir est que les remarques formulées ici à propos de certaines des questions en discussion, remarques fondées autant sur le jugement personnel que sur les statistiques, pourront être de quelque utilité. Les décisions à prendre dans les quelques prochaines années influenceront profondément sur l'avenir de citoyens et de territoires dont la plupart des Canadiens savent très peu de choses. Ces décisions, si elles sont judicieuses, peuvent contribuer à l'établissement de structures politiques et de rapports sociaux par lesquels les autochtones sentiront leurs cultures respectives et leurs valeurs mieux protégées qu'elles ne le sont où que ce soit au Canada à l'heure actuelle. Mais si elles sont erronées, elles pourraient créer des problèmes politiques ou économiques et des tensions ethniques qui risqueraient de compromettre pour plusieurs années le développement de nos sociétés nordiques.

Dans la préparation de cete étude, j'ai demandé conseil à des personnes avec qui j'ai été associé dans mon travail et mon expérience touchant le Nord. Leur

aide m'a été extrêmement utile et je les en remercie.
Je voudrais cependant souligner que j'assume l'entière
responsabilité des opinions et conclusions formulées ici.
S'il se trouve dans cette étude des erreurs de fait, elles
aussi doivent m'être attribuées.

Gordon Robertson,
Ancien président
Juin 1985.

THE AUTHOR

Gordon Robertson was Commissioner of the Northwest Territories and Deputy Minister of Northern Affairs and National Resources from 1953 to 1963. He was Clerk of the Privy Council and Secretary to the Cabinet from 1963 to 1975, and Secretary to the Cabinet for Federal-Provincial Relations from 1975 until his retirement from the public service in 1979. He was president of the Institute for Research on Public Policy from 1980 until 1984. He has continued his association with the Institute as a fellow-in-residence and has devoted his time to research on the Constitution and on federal-provincial relations.

Mr. Robertson attended the University of Saskatchewan and Oxford University and received his M.A. from the University of Toronto. He holds

honorary degrees from several universities, is the Chancellor of Carleton University in Ottawa, and is a Companion of the Order of Canada. He was sworn a member of the Queen's Privy Council for Canada in 1982.

1: THE POLITICAL AND SOCIAL BACKGROUND

Most of what is now Canada was not a part of the Confederation that came into being 1 July 1867. It was British territory; the largest part, Rupert's Land, was the property of the Hudson's Bay Company. The remainder was the "North-Western Territory" and the colonies of British Columbia, Newfoundland, and Prince Edward Island.

A British Order in Council of 23 June 1870 made Rupert's Land and the North-Western Territory a part of the Dominion of Canada, consisting then of four small provinces (Quebec, Ontario, New Brunswick, and Nova Scotia). The tremendous area, with a tiny population almost entirely of Indian and Inuit people, became the geographical quarry from which most of the structure of modern Canada has since been cut.

Manitoba was created from it in 1870, with two large further additions of territory before it reached its present size in 1912. The provinces of Ontario and Quebec as they were established in 1867 were a fraction of their modern size. They too received several accretions from what was then the Northwest Territories before they reached their present boundaries in 1912. A separate Territory of the Yukon was divided off in 1898 to establish an administration better able to cope with the "stampede" for gold. The entire provinces of Alberta and Saskatchewan were carved out of the Northwest Territories in 1905. In short, half of the provinces of Canada have been made wholly or partly from land that once was the Northwest Territories.

The political leaders in the North are conscious that "their" territory has suffered these amputations, and conscious too that their form of government was adversely affected for decades because of them. The Northwest Territories of the day had responsible self-government in 1897 but lost it when Alberta and Saskatchewan were created in 1905. It is not surprising, with such a history, that complete self-government for the Territories of today should be seen as a right and provincial status for the Territories of tomorrow as a normal expectation. It has come to all other units of Canada and to much of what used to be the Northwest Territories.

The drama in the history of Yukon is different. It

involves decades of frustration following the collapse of hopes after the gold rush and the tantalizing "boom and bust" of the years since the Second World War. There is a strong sense on the part of Yukoners that they could have done better if they had had full self-government, and especially if they could have administered their resources themselves. There, as in the Northwest Territories, the federal government owns and controls the resources.

Each of the territories lived under an essentially colonial regime, from 1898 for the Yukon Territory and from 1907 for the Northwest Territories, until the 1970s. Although the Yukon Council had elected members, the commissioner, appointed by the federal government, had the executive power and was responsible to the minister in Ottawa, not to them. Not until 1970 did the minister instruct the commissioner to establish an Executive Committee. It soon became an Executive Council, and in 1979 the commissioner was given specific direction to act on its advice.

The truncated Northwest Territories of 1905 was also governed by a federally appointed commissioner. No council was appointed for legislation or for advice until 1921, and it then consisted entirely of federal civil servants. No one resident in the Territories was appointed to the council until 1947. The first elected members, all from the western part of the Territories, did not come until 1951. In 1975 the first fully elected Legislative Assembly since 1905 took office. Indian,

Inuit, and Métis members were a majority among the fifteen elected. An Executive Council now exists with the responsibility that used to be that of the commissioner to administer the affairs of the Territories.

In recent years a new dimension in political activism in the North has been added by the growing self-consciousness and political capacity of the aboriginal peoples. Two factors explain this change. One is the new awareness, by them and by Canadians generally, of aboriginal rights. The Indians, Inuit, and Métis of the North are no longer prepared to acquiesce in political and social systems that do not take account of the cultural and linguistic differences that distinguish them from the population of European origin whose cultures, traditions, and values have almost exclusively shaped government and law in Canada. The other factor is that education in the North has been more generally available for native children since the 1950s. The younger leaders can cope increasingly with issues, negotiations, and political processes on an equal basis with the whites.

In the new climate, the ethnic composition of the territories and the location of the different groups take on a particular importance. The population of Yukon in 1981 was 23,074, of which 4,045 were classed as native in the census of 1981. (The Council for Yukon Indians puts the native total much higher at about 6,000, of whom some 10 per cent are outside Yukon temporarily

at any given time.) All but 185 of these were status or non-status Indians. The population of the Northwest Territories in 1981 was 45,537. Of these slightly more than 58 per cent were aboriginal peoples. The largest native group was Inuit (15,910); status and non-status Indians numbered 7,925, and Métis, 2,595.¹ The Northwest Territories is the only political division in Canada in which the "others," almost entirely of European stock, form the minority though they constitute the largest single group.

In Yukon, the non-native population was overwhelmingly in two centres in 1981—Whitehorse and Faro. Faro has since shrunk with the continuing inactivity of the Cyprus-Anvil Mine. Whitehorse contains the largest part of the non-native majority in Yukon. The native population lives mostly in small communities or "on the land," scattered across the territory. The Council for Yukon Indians (CYI), the organization of the native people, represents their interests, particularly in handling their land claims.

In the Northwest Territories the tree line divides the Inuit from the Indians and Métis, except at the delta of the Mackenzie River. Eighty per cent of the population north of the tree line is Inuit, and virtually all the Inuit population is there—in the true Arctic. In the delta the three native groups share, with a substantial number of whites, the communities of Inuvik and Aklavik. The forebears of the Inuit of that western Arctic region came fairly recently from Alaska, and the

people, the Inuvialuit, are conscious of a special identity distinguishing them from the Inuit further east. This identity and location have important political consequences. In the central Arctic between the two groups are the Kitikmeot, which signifies "in the middle." They are few in number but important because of their location in a very empty land.

The Indians, except the Crees in the southern part of the Territories, speak different dialects of the Athapaskan language and are aware of shared interests and identity. They participate in political and other discussions as the Dene Nation. The Métis are associated with the Dene through the Métis Association of the Northwest Territories.

Two studies have examined the form of government in the Northwest Territories in the past twenty years.

In 1962 the Council of the Northwest Territories, on the motion of Knut Lang, the elected member from Mackenzie Delta, debated whether it would be desirable to divide the Territories in two for more effective administration. A resolution in favour of division was adopted and sent to the federal government of Prime Minister John Diefenbaker, which agreed with the recommendation. It introduced bills to establish the territories of Mackenzie in the west and Nunassiat in the east. The dividing line would have run north-south to the Arctic coast, and then around Victoria Island (which would have been in the western territory),

putting the Inuvialuit and part of the Kitikmeot in the Territory of Mackenzie. The rest of the Inuit and the small white population of the Arctic would have been in Nunassiat. The legislation died on the Order Paper when the Diefenbaker government was defeated early in 1963. The Pearson government, which came into power in April 1963, set up an advisory commission under Dean A.W.R. Carrothers, then of the University of Western Ontario, to report on the whole question of government.

The Carrothers Commission advised in 1966 against division at that time. It recommended greater development of self-government for the Territories as a whole, which has since taken place. It felt division would retard both the process of self-government for the eastern Arctic and the movement toward provincial status. Its recommendations were adopted and have influenced the developments of the past twenty years during which responsible government has been achieved in the Northwest Territories as an undivided whole.

The development of self-government after 1966, together with the growing awareness of possibilities of adapting institutions of government to particular regional and cultural interests, led to the next stage. In both the eastern Arctic and the Mackenzie area the native peoples entered into discussion about their own and their area's desire for new forms and structures. The federal government responded by appointing the Honourable C.M. Drury in July 1977 as Special

Representative for Constitutional Development in the Northwest Territories. His report in January 1980 recommended "the achievement of accountable, responsive and effective government" that would "reflect the values and concerns of all Northerners, both native and non-native." To provide a greater reflection of those interests, he recommended "extensive decentralization of community-related territorial functions." He advocated that a "forum" be created "with the specific mandate to examine and advise the Council [of the Northwest Territories] on the question of division," while making clear that his own report supported "a united NWT."

In both the Yukon and the Northwest Territories consideration of the further development of the institutions of government and the relationship to them of aboriginal rights and the settlement of aboriginal claims has been intensive in the past few years. Expectations are high for new decisions and new arrangements.

2: POLITICAL EVOLUTION: THE QUESTIONS AT ISSUE

The question whether to accord complete self-government to the northern territories no longer seems to be in doubt. It has been substantially achieved already, except for the control and administration of non-renewable resources. The federal government, through the minister of Indian affairs and northern development, has indicated its willingness to help achieve "the objective that we all share: strong, responsible, northern governments that capture and reflect the unique social values and economic realities on which they will be built."² On the one major lack from the normal ambit of provincial powers, the control of resources, Mr. Crombie said: "It is not acceptable that you [i.e., the Territories] should be denied a voice in the use of minerals, oil and gas. I intend to seek the

support of my cabinet colleagues to start discussions in this regard with territorial governments."³ The fundamental problem in both territories is how to achieve and to fashion the governments that can best, in the judgement of the peoples of the North, "capture and reflect the unique social values" of the widely different communities involved. Provincial status, which is generally assumed to be the goal of the northern territories, could condition the design and nature of such governments. It also involves the "economic realities" to which Mr. Crombie referred.

The Northwest Territories

The desire of the Inuit people of the eastern Arctic to see a Territory of Nunavut in which their culture and values would be reflected and protected was demonstrated in a plebiscite on 14 April 1982. More than 70 per cent of eligible voters in the east voted on the question of division, with more than four to one in favour. In the west the vote was less decisive. Throughout the Northwest Territories 56 per cent of the voters were in favour of division; 44 per cent were opposed. The boundary is the critical unresolved question. If this question can be resolved, it seems clear that division will occur. Once a boundary is determined, the question arises of the kind of government to be established.

A report titled Political Development in Nunavut, discussed at the annual general meeting of the Inuit

Tapirisat of Canada at Igloolik, Northwest Territories in September 1979, advocated the tree line as the boundary for the proposed new Territory of Nunavut. It argued: "The parts of the existing N.W.T. that are north and east of the tree line form an area that is distinct. Climate, ecology, economy, history and culture share in making this area distinct."⁴ A tree-line boundary would run from southeast to northwest from the 60th parallel in the south to just below the Arctic coast at the western limit of the Territories. It would put the northern coast of the continent and all the Arctic islands in Nunavut. (See the maps following the text.)

So extensive an allocation of territory, especially as it would include all lands with coasts on the Beaufort Sea with its prospects for petroleum development, was unacceptable in the west. The Legislative Assembly of the Northwest Territories referred initial discussion of division and of boundary to three entities representing all the interests involved: the Nunavut Constitutional Forum (NCF), the Western Constitutional Forum (WCF), and, as a joint entity, the Northwest Territories Constitutional Alliance. The Committee for Original Peoples' Entitlement (COPE), representing the Inuvialuit of the western Arctic, was given the option to participate in either or both of the regional forums. That option recognized that, though the Inuvialuit share the language and culture of the other Inuit to the east, they also have economic, transportation, and social

connections with the people of the west.

The Dene and Métis groups advocated slightly different north-south boundaries that would put the western Arctic and the Beaufort Sea in the western territory. The Western Constitutional Forum insisted that any new territories had to be economically viable and that, for the west, this included access to the Beaufort Sea. The boundary issue appeared to be resolved in a meeting of the Constitutional Alliance on 12-13 January 1985. The "Principles of Agreement" set forth both the elements of the problem and what appeared to be a fair solution. On this matter it read:

The pivotal situation of the western arctic coast, homeland of the Inuvialuit, is evident to all. Location and recent history make for natural ties between this region and the Mackenzie Valley, while Inuit cultural traditions and marine orientation align it more naturally with other NWT Inuit. Both NCF and WCF recognize the uncertainty as to the future of this region is blocking progress on further NWT self-government. A resolution of this question was explored. The predominantly Inuit region of Nunavut will never be satisfied with political arrangements which fail to first create a Nunavut territory. The several peoples of the Mackenzie Valley area insist that an equitable territorial division must include the western arctic coastal region in a western territory. The small Inuvialuit population seeks guarantees for their future regional and cultural identity through a regional government structure.

The Constitutional Alliance agrees that the WCF will explore immediately with the Inuvialuit a set of agreed principles to enable the Inuvialuit to find a satisfactory future in a

western territory. Such agreement would respect both the need for the peoples of the western territory to devise their own political arrangements without undue interference, and the regional importance of protecting the regional and cultural heritages of all peoples within the future western territory.

The NCF and WCF agree in principle that the western arctic region will be part of a western territory, subject to the above. NCF and WCF agree in principle, subject to further work by the Dene, Métis and Inuit working in their land-use overlap study which is now proceeding well, on an approximate Nunavut boundary from the 60th parallel to the south-east corner of the COPE claim area of the Inuvialuit, then northward along the eastern border of the Inuvialuit settlement region.

This agreement on a tentative boundary is subject to possible modification based on the opinions of communities in the Kitikmeot West region (Coppermine, Cambridge Bay, Bathurst Inlet and Bay Chimo).

Discussion of the "agreement in principle" in the Legislative Assembly of the Northwest Territories in early February 1985 revealed that deep problems still remained. The leaders of COPE made it clear that the price of Inuvialuit participation in a western territory might be creation of a Western Arctic Regional Municipality (WARM) with very substantial powers. The concept was given precise shape in 1983 and was modelled on the North Slope Borough in Alaska, which enjoys extensive powers over a wide area inhabited almost entirely by Inuit people. As conceived by the spokesmen for COPE, the regional municipality would take on some of the qualities of a separate territory

while still being part of the larger western one. Some of its powers would be delegated federal powers under a relationship with Ottawa that would leave out the territorial government. Others would be territorial in nature and entrenched in the territorial constitution. When WARM and the territorial government conflict, WARM would have a right of override.

The western members in the Legislative Assembly were concerned at so substantial a commitment before the nature and structure of their new territory had been developed. On the other side, the members from the eastern Arctic were equally concerned that a Nunavut minus the western Arctic would have fewer than 14,000 people and would lack the resources to provide employment and development. The boundary will not be an easy issue to resolve.

The Inuit seek a separate territory because they wish to have a political unit largely Inuit in population with structures of government that will enable them to carry on their lives and control their environment in accordance with their own values and preferences. Because they constitute 80 per cent of the population north of the tree line, they see no reason why it should not be possible for their culture and views to have there the preponderant influence that other cultures have in other jurisdictions of Canada. The Inuit leaders have made clear that they do not seek exclusive or discriminatory political power. As they see it, they seek their right to self-government in a way not

inconsistent with rights so recognized elsewhere in Canada. Their 1979 report, Political Development in Nunavut, contemplated a staged development, with progressively greater territorial self-government ending, after fifteen years, in "full provincial status with powers such as are enjoyed by other Canadian provinces." Since 1979 the Inuit leaders appear to have had increasing doubt about the timetable and possibly about the objective of provincial status.

The problem of the west, with its mixed population, is more complex. In 1981 the Dene Nation and the Métis Association published a report, Public Government for the People of the North. It proposed "a new province-like jurisdiction—to be called Denendeh." Regardless of the decision on the final boundary, after division the aboriginal people would become a minority in the west. The status and non-status Indians plus the Métis would, however, constitute approximately one third of the population based on the 1981 census figures, the largest Indian-Métis minority in any political division in Canada. The Dene seek some special features of government to ensure protection of their culture, values, and aboriginal rights in what they see as their homeland and future hope for survival. A "Dene Senate" has been proposed with possible powers of veto over legislation "if the Senate determines that the legislation adversely affects aboriginal rights." The Dene will seek official status for all aboriginal languages and probably will ask for some regional

devolution of powers over issues of local or regional concern. If the effort to structure such protections within a "public government" fails, the Dene may seek separate "Indian self-government" over defined areas along the lines that Indians are seeking in other parts of Canada.

The Western Constitutional Forum has been given the difficult task of producing a plan of government that will be acceptable to all. The native tradition of consensual decision making excludes a voted decision in which one group might be out-voted by other groups, producing a three-to-one or a four-to-one result.

The forum has stated its daunting task in the following terms:

When it comes to the preparation of a new constitution, the WCF and the Nunavut Constitutional Forum share the same objectives:

First is the development of a Structure and Style of Government which reflects the cultures and the values of each territory's unique population.

Second is the conscious and active recognition and protection of Aboriginal Rights.

Third is the establishment of an appropriate balance between individual and collective rights.

Fourth is the establishment of an efficient and effective government service.

Finally comes the steady transfer of powers and jurisdictions from the Government of Canada to the new territories as each evolves towards provincial status.⁵

Yukon

As the Yukon Territory now has the substance of self-government, except over natural resources, there is an understandable tendency to see political evolution in limited and legalistic terms. The structure is now, in all essentials, the familiar one of parliamentary government in Canada. A new Yukon Act could give it legal expression, could complete the elements of provincial-type powers not now handled by the territorial government, and could provide a high degree of security for the system. Provincial status is generally seen as the normal, ultimate step. In such terms the direction and the nature of political evolution seem clear. Some leaders among the Yukon Indian community, however, hold very different views.

The Indians of Yukon did not in the past, like Indians in most other parts of Canada, enter into any treaty with the Crown. There has never been any legal surrender of lands or any definition of Indian rights. Since 1973 the Council for Yukon Indians and the government of Canada have been discussing Indian claims and aboriginal rights. The Indians sought to have the negotiation of Indian self-government and political rights combined with the land and resource settlement. Both the federal and the territorial governments resisted this view, arguing that political rights and governmental structure cannot be settled without the involvement of the territorial government. The Council for Yukon Indians was still uneasy with this process in

1983. In its submission to the Special Committee of the House of Commons on Indian Self-Government it said:

In spite of all the assurances contained in the foregoing statements dating back to 1979, the Yukon Indian people now have reason to fear exclusion from constitutional discussions.

In their recent public campaign the territorial government has opposed Indian involvement in constitutional talks, characterizing such involvement as a "second kick at the cat" after the claims have been settled. Such is not the case; the Yukon Indian people initially preferred to address and resolve all issues within the claims forum but have agreed that such is not possible.

There are many issues, such as that which is raised in the next section, which cannot be appropriately dealt with in the context of claims negotiations. The only assurances sought by the CYI are that a forum will be created to address issues and that Yukon Indians will be participants.⁶

After long negotiation an Agreement in Principle between the federal government and the Council for Yukon Indians was reached in early 1984. The agreement was ratified by the federal government and also by the territorial government in April 1984. It encountered difficulty gaining acceptance, however, by some of the Yukon Indian bands. By July 1984 it had been approved by eight of the twelve bands. At their General Assembly during the same month and at a Special General Assembly in October-November 1984, the CYI passed resolutions calling for renegotiation of major elements of the agreement. The meeting also called into question the acceptance by the bands that

had voted in favour of it. As a result, the Agreement in Principle was considered to be rejected. The rejection appears to rest on an unwillingness by some of the Indian leaders to reach any final conclusion about land claims until the shape of future political development is established and adequate protection of Indian political rights is guaranteed.

Indian spokesmen in Yukon have stated that northern native peoples share one common goal: self-government. Resource use, resource development, the preservation of game stocks, and the possible impairment of the environment all are argued to be fundamentally linked to the native culture. Political arrangements that will ensure effective Indian participation in all resource development that could affect them and their future are seen as vital "to avoid our own destruction."

The Report of the Special Committee of the House of Commons on Indian Self-Government is brief in its comments about the problems "North of 60°":

The social and political situation of Indian First Nations north of 60° is very different from that prevailing in the provinces. Since territorial status is in evolution, Indian peoples, other aboriginal peoples and non-Indian settlers of the northern territories have a unique opportunity to build the basis for a new relationship more satisfactory than the one that exists in southern Canada. At present, northerners are actively seeking self-government. Both land claims and constitutional discussions are proceeding.

Witnesses at northern hearings described the attempts of First Nations and Non-Indian governments to create governmental structures to meet the common needs of all citizens of Canada's North and to respect all cultures. Ongoing negotiations reflect a desire to accommodate the legitimate rights and aspirations of all permanent residents north of 60°. Undoubtedly, any model of self-government that emerges in the North will be adapted to the unique needs of that region.⁷

Despite the apparently simpler situation, the problems of political evolution and of governmental structure in Yukon may be no easier to resolve than the one in the western part of the Northwest Territories.

3: THE HOLY GRAIL: PROVINCIAL STATUS

The common assumption that provincial status should be the objective for the territories ignores the problems which the attainment of that status would almost certainly create. Such problems would become apparent at once if provincial status were to be sought at an early date. Even if that status is not pursued in the near future, its retention as the preferred objective is likely to impose serious constraints on innovative and unusual political structures that might best suit the circumstances of a territory. Such structures, reflecting the particular ethnic, cultural, or economic conditions of areas that are unique in Canada, are not likely to conform to our conventional provincial patterns of government.

In general, provincial status seems to have been

accepted as the objective simply because it has been the normal means by which self-government has been established and authenticated in Canada in the past. The status as such has rarely been analysed to determine just what it involves, what the problem of attainment might be, and whether it would in fact fit the special conditions that prevail in the North. Moreover, it seems that no comprehensive examinations exist of the alternative possibility: that everything important for the North, including full self-government and a share in the control over and revenues from resource development, could be achieved without provincial status.

What does provincial status involve?

From a long association with federal-provincial relations I would suggest that it involves three things: a constitutional regime, a financial regime, and "membership in a club"—the federal-provincial club.

The Constitutional Regime

The constitutional regime for provinces comprises two elements: status and powers.

The status is the essence of federalism—the existence of two orders of government, one central and the other state or provincial, each government with its own basis in a written constitution, with a constitutionally defined role and with protection for its authority and powers guaranteed by an independent judicial authority. The powers of the two orders are

laid down in the constitution of the federation, in our case largely in Sections 91 and 92 of the British North America Act, now called the Constitution Act, 1867. Other sections, and a new Section 92A enacted in the Constitution Act, 1982 confirming resource jurisdiction for the provinces, round out the lists. Clashes over which government has the power to legislate in particular circumstances have been frequent. The Judicial Committee of the Privy Council before 1949 and the Supreme Court of Canada since 1949 have had the final word.

What is the difference between the constitutional regime for the provinces and the one that applies to our two present territories? The difference today is more in status than in powers.

The powers of the two territories are not set out in the Constitution. They are set out in two federal statutes: the Yukon Act and the Northwest Territories Act. In substance, those powers are very much the same as the powers of a province under Section 92 of the Constitution Act, 1867, with one major and a few minor exceptions. The greatest difference, as indicated earlier, is in the ownership of Crown lands and the control over natural resources. These belong to the federal government and are administered by it. In all provinces the Crown lands are the property of the province. Each province has jurisdiction over the resources within its territory.

No other difference in powers looms large. The

Attorney General of Canada directs criminal proceedings in the territories; provincial attorneys general do so in the provinces. A few other differences of detail relate to health services, specific roads, and other matters. None is significant.

In the exercise of powers, changes in the past fifteen years have made the territorial governments operate very like those in the provinces. The commissioner is almost indistinguishable from a lieutenant governor in Yukon and nearly so in the Northwest Territories. The Legislative Assemblies are composed entirely of elected representatives of the people—sixteen in Yukon and twenty-four in the Northwest Territories. The assemblies elect the commissioners' advisers—the Executive Councils, on which the commissioner does not sit in Yukon but on which he does in the Northwest Territories. Those executive bodies must have the confidence of their Legislative Assemblies to continue in office. They are essentially like provincial cabinets, although in the Northwest Territories the absence of a system of political parties at the territorial level removes the element of party discipline that makes for cohesion within the provincial bodies. There is no premier, but rather a Leader of the Government in each territory. The system is largely the kind of responsible parliamentary government that is traditional and familiar in Canada.

On the question of status the position is vastly

different. Neither the powers of the governments nor their methods of operation have a constitutional base. The federal enactments that list the powers are out of date. They set out a system of administering the powers that is totally different from the one described above. The Yukon Act and the Northwest Territories Act legally vest the powers of government in the commissioners, say nothing of an Executive Council whose advice must be taken, and suggest comprehensive ministerial control from Ottawa. It is on that power of control that the whole system rests today. Instructions from the minister to the commissioners, and nothing more formal or more enduring, have changed the systems from those of undemocratic colonies to the parliamentary democracies of today. Neither constitution nor law provides any guarantee or protection for the status that now exists.

The Financial Regime

At Confederation in 1867 the financial regime that was established for the provinces was quite simple, which is not surprising since government then was so limited in scale. The new federal government created in 1867 took over the debts of the federating colonies. The colonies became provinces, and they were to finance their operations by direct taxation plus some grants from the federal government. Those grants were spelled out, for purposes of finality, in the Constitution itself.

With superb optimism the constitutional provision stated, "Such grants shall be in full Settlement of all future Demands on Canada." As the Rowell-Sirois Report put it, "great efforts were made to freeze them [i.e., the provincial subsidies] at the 1867 amounts."⁸ The effort was futile. In fact, the first adjustment came only two years later, in 1869, to help quell dissatisfaction in Nova Scotia. An amendment of the British North America Act in 1907 and several other revisions in the following years adjusted the grants. They had initially provided a substantial part of provincial revenues—over 50 per cent in 1868 and still nearly 40 per cent in 1890—because other provincial revenue sources were then so limited. As the provinces developed new methods of raising money, however, their dependence on federal transfers diminished. By 1930 only 10 per cent of their funds came from the federal government. That reliance on what the provinces could raise by themselves was satisfactory as long as their economies were buoyant, but the depression of the 1930s and the disastrous drought of those years in the Prairies made clear the inadequacies in the system. The near bankruptcy of some provinces led to the appointment of the Royal Commission on Dominion-Provincial Relations (the Rowell-Sirois Commission). Its report in 1940 is the intellectual basis of the very different financial regime of today. The commission's essential recommendation was for a system of "national adjustment grants" to make it

possible for every province "to provide, for its people, services of average Canadian standards."

The Second World War, together with post-war problems and differences of view among the provinces, postponed implementation of the plan until 1957. In that year the principle of what is now called "equalization" was incorporated into financial agreements to cover the years 1957-1962. Equalization has been refined, developed, and extended since and is a fundamental of Confederation today. Other transfers from the federal government have also grown enormously in the past thirty years. The figures for 1985-1986 show how the picture has changed from the very modest subsidies to the provinces that were contemplated at Confederation. Those statutory subsidies, initiated in 1867, still continue. With the great increases made in them over the years, they amount to \$35.8 million in 1985-1986. This is a respectable and substantial figure—many times what was in 1867 to be "full Settlement of all future Demands on Canada." The total of federal transfers to the provinces in 1985-1986 is, however, a vastly different figure: \$26.4 billion. The statutory subsidies amount to 0.14 per cent of the total. These changes are eloquent evidence of the transformation in the size of government since Confederation and also of the degree to which federal and provincial financing has become entangled.

The main transfers are of two kinds: specific

purpose transfers and equalization transfers.

Specific purpose transfers to the provinces pay a substantial part of the costs of social security programs, most of them established since the Second World War. The programs include health and hospital insurance, post-secondary education, welfare under the Canada Assistance Plan, and other matters much smaller in scale. These transfers go to all provinces. In fiscal year 1985-1986 they amount to \$20.9 billion.

The principle enunciated by the Rowell-Sirois Commission has gone through intense scrutiny, repeated negotiation, and the most meticulous refinement every five years since it was put into practice in 1957. The importance of the concept of equalization is reflected in the fact that it is now entrenched in our Constitution.

Section 36(2) of the Constitution Act, 1982, commits the federal Parliament and government "to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation" (emphasis added).

The virtue of the concept is equalled only by the difficulty of the task. It would be extraordinarily difficult to achieve any objective or measurable comparison of "levels of public services." It would be even more difficult to get any agreement as to whether the administration in a specific province is efficient

and economical or whether unduly high costs are the result of waste or extravagance. Such questions and judgements would be essential if payments depended directly on the extent of services in different provinces or on what those services appeared to cost. As a result, no attempt has ever been made to compare standards of service, to investigate the true cost of services under any provincial administration, or to focus on the "needs" of a government.

What one can measure objectively without becoming involved in the auditing of provincial accounts or in the assessment of their administrations is how much a given level of taxation yields in a province as compared with other provinces or with some national average. In other words, it is possible to determine how much money a tax on a person in, say, Newfoundland will provide to the provincial government there as compared with the amount the same tax would provide, per person, in Canada as a whole. If the tax yields less in Newfoundland (as it does), the taxpayers of that province would have to be taxed more heavily to make the same amount of money available for their public services than would the taxpayers of, say, Ontario or Alberta. They could not, on their own, have "comparable levels of public services" available to them "at reasonably comparable levels of taxation." This is accordingly the basis on which equalization has always worked. The key question is the tax yield per capita in a province, not the cost of services.

The per capita tax yield of twenty-nine revenue sources in each province is now the calculation that determines whether a province receives equalization. The yield in each province is compared with what is called the "representative average standard." If the yield in a province is less than that "average," the province receives equalization to bring it up to the average. At present six provinces receive these transfers: the four Atlantic provinces, Quebec, and Manitoba. In the current fiscal year, 1985-1986, the total amount to be provided comes to \$5.1 billion.⁹

In addition to equalization a few other general purpose transfers will provide another \$827 million to the provinces in 1985-1986.

The equalization part of the federal-provincial regime constitutes the big difference between the financial system that applies to the provinces and that which applies to the two territories. The territories have, in general, the same powers to raise revenues as the provinces do. The main exception is that, because they do not own the resources of their region, they cannot now impose taxes or royalties on resource development or production. The territories also receive specific purpose transfers from the federal government on much the same basis as the provinces do. The estimate of these transfers for 1985-1986 is \$105.2 million. The territories do not, however, receive equalization. Indeed, if the equalization standard now used were applied to the territories they would not qualify to receive it at all.

Instead of equalization, each territory has thus far received from the federal government a grant to make up the difference between, on the one hand, the total of the revenues it could raise itself, plus federal transfers for specific programs, and, on the other hand, the total expenditures budgeted for the following fiscal year. Because the grant is designed to cover the difference between revenues and expenditures—the prospective deficit—it has usually been referred to as a "deficit grant." It has covered, year by year, inadequacies of revenue to meet expenditures both for operations and for capital purposes. No such deficit grant exists for any province.

The deficit grant brought the federal government into an examination of territorial affairs in order to get agreement on the program of expenditure for each territory in each year. It also operated as a deterrent to territorial efforts to increase their revenues by their own efforts since whatever they raised in additional tax revenue they would lose from their deficit grant. Because of these two problems the report of the Honourable C.M. Drury in January 1980 recommended a new method of calculating the grant. This recommendation has, in its essentials, been accepted. Instead of being determined a year at a time, the grant for each territory, starting with the fiscal year 1985-1986, will rely on a base year in which a deficit grant was established in the old manner. The total revenues of each territory in the base year will be adjusted by

means of an "escalator" related to changes in the level of provincial and municipal expenditures in the country as a whole.¹⁰ This will eliminate both of the problems in the old system. Although the method of calculation is new, the basis of the grant remains the amount needed to cover the territorial deficit at a point of time with annual, but now arithmetically objective, adjustment. It is still a deficit grant, and still something no province receives.

The Extent of the Difference

The profound difference between the results of the equalization plan for the provinces and the deficit grant system for the territories is indicated in the following table, which shows the amount of the respective grants received as a percentage of the total revenues of the six provinces receiving equalization and of the corresponding revenues of the two territories:¹¹

Equalization Payments as a Percentage of Provincial Gross General Revenues			
	1982-1983	1983-1984	1984-1985
Newfoundland	29.8%	25.9%	26.2%
Prince Edward Island	30.5	28.9	28.5
Nova Scotia	26.5	23.4	22.3
New Brunswick	27.7	22.7	22.0
Quebec	14.2	13.5	12.4
Manitoba	16.0	14.5	13.3
Deficit Grants as a Percentage of Territorial Gross General Revenues			
	1982-1983	1983-1984	1984-1985
Yukon	41.6%	54.1%	54.8%
NWT	62.6	66.4	68.3

Newfoundland and Prince Edward Island receive the highest proportion of total revenue from equalization, but in none of the recent years has that exceeded 30.5 per cent. The other receiving provinces are substantially lower in their proportions. In contrast, the Yukon Territory has received from 41.6 to 54.8 per cent of its revenues from its deficit grant, and the Northwest Territories from 62.6 to 68.3 per cent.

Per capita, the difference in federal revenue made available is much more striking. In 1982-1983, for the two territories together, taking a population of 70,000 (in 1981 it was 68,611), the deficit grants amounted to \$5,371 per capita. For the six provinces receiving equalization in that year the per capita figures were: Prince Edward Island, \$953; Newfoundland, \$906; New Brunswick, \$702; Nova Scotia, \$675; Manitoba, \$414; and Quebec, \$407. The two territories received, per capita, 5.6 times as much in federal transfers as the province with the largest equalization transfers.

Differences of this kind do not reflect wanton extravagance by the territorial administrations. They are the financial reflection of what everyone familiar with the North knows: costs of virtually everything are much higher than in the South. Distances are enormous, population is sparse, the country is at an early stage of development with great need for economic and social infrastructure, the climate is cruel, building conditions are difficult, and commodities from "outside" must come long distances at high cost.

The Drury report found the average per capita expenditures of the government of the Yukon Territory in 1978-1979, \$4,742, to be more than twice as high as the national per capita average of all of Canada for provincial and territorial expenditures, \$2,054. Expenditures of the Northwest Territories, \$5,933 per capita, were almost three times the average for all Canada. Undoubtedly, more revenue could be raised in the North itself to meet these very high costs. The cost burden for its citizens and for businessmen and companies operating there is, however, already far heavier than in the South. The simple truth is that the need of governments in the North is much greater than of those in the South because every kind of cost is greater. Such are the facts of the North.

The financial regime of the provinces does not remotely fit the North. As has been mentioned, if the territories were to be treated like provinces, they would not even qualify to receive equalization. As measured by the formula for tax yield, the territorial taxes show a per capita capacity to derive revenues that is slightly above the national average. The tax yield is high in relation to a national average. It is, however, desperately low in relation to the costs of government that must be met in the North. As Drury says in his report: "The equalization formula was never intended to be used as a basis for making comparisons between jurisdictions that have widely differing costs of providing public services." To put the matter

another way, the financial regime that applies to the provinces is based on the assumption that their expenditure needs for services to their populations are comparable from province to province. That assumption does not hold in the circumstances of the territories. As a result the financial regime that well suits the needs of the present provinces would not meet those of provinces north of sixty degrees.¹²

Membership in a Club

The association of federal and provincial governments undoubtedly constitutes the most exclusive "club" in Canada. Starting with five "members" in 1867, the club today comprises eleven. Because some provinces thought there might be risk of some new candidates being brought in under the old "rules" that could affect their interests, they managed to tighten them up in the Constitution Act, 1982.

From participation in countless federal-provincial conferences and meetings over a period of thirty years, and from a fascinated observation of the conduct of a wide variety of participants in this privileged club, I would say there are six important rules:

1. Membership is restricted to independent governments, with their status guaranteed by the Constitution. Cities may have—and do have—populations ten or twenty-five times that of a province, but they need not apply; they cannot be members. Population or wealth provides no entrée to the magic circle.

2. The federal government is different, but it is not superior. Its representative is normally chairman of the club meetings, and the difference in the role and responsibility of the federal government is recognized. It will usually, however, pay a high price if it tries to dominate. A "co-operative" demeanour is favoured and is, on the whole, the most productive.

3. All provincial members are equal in formal status. To paraphrase the report of the Royal Commission on Taxation of some twenty years ago, "a province is a province is a province." The realities of size are not ignored, but the dignity and the form of equality are important. Special status is fiercely resisted. Governments of Quebec found this out over many years of discussion of ways to recognize the distinctive character of Quebec as the heartland of French culture in Canada. Every effort foundered on the rock of equality.

4. To ensure that rules 1, 2, and 3 are not impaired, arrangements for fiscal transfers from the federal government must be under a formula that is open to all provinces. They may not all qualify, as four (Ontario, Alberta, British Columbia, and Saskatchewan) now do not for equalization, but the formula is open to all and the rules are clear. No province can be given a special "deal."

5. The status of members of the club cannot be changed except under strict procedures now laid down in the amending clauses of the Constitution Act, 1982.

6. No new member can be admitted to the club except after consultation with all and agreement of eight of the present eleven. Until 1982 that was not so: the federal government alone could admit new members, as it did for Manitoba in 1870 and for all other additions to the club up to and including Newfoundland in 1949. That is no longer the case. Sections 42(1) (f) and 38(1) of the Constitution Act, 1982, provide "black ball" rules as effective as any club could want. They will be used with a hard eye in the interest of the present members.

These propositions are not laid down as club rules, but I do not state them in jest. I think they represent a reality that should be understood, with all its implications, by anyone who advocates provincial status as an option or as an objective for the political development of the northern territories.

The reality underlying the rules is not simply a desire on the part of existing provincial governments to be exclusive or restrictive. Genuine and important provincial and regional interests are involved. Awareness of those interests led to the successful pressure to have the new amending procedures for the Constitution require the approval of two thirds of the provinces with at least 50 per cent of the population of all the provinces (Section 38 [1]) before a new province could be established.

That provision, which is the general amending procedure for the Constitution, reflects one of the most

important of Canadian realities—our deep regional differences and regional interests. Under the amending procedure no amendment can carry if any four provinces are opposed, which means that both the West and the Atlantic region, each of which has four provinces, can veto any change that either region perceives to be against its own interest.

The arithmetic that produces four as the magic number with power to block an amendment was no accident. It was the mathematical alternative to the specific recognition of regionalism that was provided in the "Victoria amending formula." That formula, providing vetoes in clear words for Quebec, for Ontario, for the West, and for the Atlantic was too direct. What was worse, it conferred "special status" on Ontario and Quebec as specific provinces and so infringed the club rule that all provincial members are equal. Still, regionalism is too deep to be ignored. The arithmetic of the amending formula protects it for the vulnerable areas of East and West without referring to it.

The establishment of one new province would not upset the arithmetic that produces the "blocking four." With eleven provinces, the approval of eight would be required for an amendment, so four could block. The West and the Atlantic region would still be protected. If two territories or three were to become provinces, however, making twelve or thirteen provinces in total, the mathematics so carefully designed to protect regionalism would be destroyed. In either case the

requirement for two thirds of the provinces to pass an amendment would mean that eight out of twelve or nine out of thirteen could do it. It would thus require five provinces to block an amendment. In short, the amending procedure itself, effective in 1982, has created a new interest by the existing provinces in the possible establishment of any new ones.

A special relevance of these realities for any desire in the North to see new provinces there is that, as described above, the financial regime for the provinces would not fit northern conditions. If, as suggested by the Honourable David Crombie in an address to the Legislative Assembly of the Northwest Territories in Yellowknife on 6 February 1985, a plan could be worked out for "joint federal-territorial natural resource management and the sharing of revenues derived from development" of minerals, oil, and gas, there would in time be added revenues for the territories or for some of them. It would, however, require great confidence in future oil prices or in the competitive position of northern resources to assume that the rate of development, and the amount of tax that development could stand, would move northern governments from a position of needing 50 to 60 per cent of revenue in deficit grants to one where 28 or 30 per cent would suffice—assuming some new basis of equalization that would make equalization payments available at all.

A territorial candidate for admission to the

provincial club would be seeking either a major change in the basis of equalization, now established for nearly thirty years with new constitutional sanctity given to it in 1982, or a special financial regime for its own needs. It would be a very large order indeed to expect that the former would or could be done. The latter would be quite contrary to the rules.

A transitional arrangement could provide additional funds for a new province during some brief period. Newfoundland was accorded twelve years "to facilitate the adjustment of Newfoundland to the status of a province of Canada" under Article 28 of the Terms of Union of December 1948. There was provision for possible limited extension if necessary under Article 29, which was in fact provided. But that was all. Newfoundland then became a province like the others. A northern province could probably expect something comparable, but, after a short transition period such as fifteen or twenty years, it would have to be able to finance under the general provincial fiscal regime. The other club members would almost certainly go no further. They would have the constitutional power to impose their views, even if a federal government was prepared to establish a new and more generous regime for a northern province with all the leverage that would provide at a later date to force up the payments to other "have not" provinces.

4: OPTIONS IN POLITICAL STRUCTURE FOR THE NORTH

Self-Government without Provincial Status

One political objective for the North on which the spokesmen for all groups agree is complete self-government. The tendency to identify it with provincial status is understandable: the provinces have the self-government the territories and the groups within them seek, and provincial status has been the normal vehicle for its achievement in Canada. There is, however, no need for that identification. Full self-government is attainable without provincial status. Although it would not carry the prestige trademark of "province," it could have all the substance. It could, indeed, provide more of the reality because only adequate financial provision on a secure basis can make self-government workable.

The central problem of the financial regime under which the provinces of Canada operate is fundamental and almost certainly insoluble for possible northern provinces. In the 1930s several of the provinces of Canada were in such financial trouble that they had to have recourse to the federal government for special aid. Some was provided, but with a variety of conditions. As the Rowell-Sirois Commission said, after reviewing the circumstances and the problems of the provinces in this humiliating position, "the only true independence is financial security."¹³ The federal-provincial fiscal arrangements of today are designed to give substantial assurance of such security for the ten existing provinces. They would not provide it for the North.

The only significant governmental power lacking in the North today is control over non-renewable resources. That deficiency is not important for revenue now lost, as development is still limited. It is problematic how much revenue could be raised from resources in the near future. The lack of resource jurisdiction has greater immediate significance for control over economic development and conservation. However, the award of provincial status would not, in itself, necessarily accord jurisdiction over resources. Although Alberta and Saskatchewan became provinces in 1905, they did not get ownership and control of their resources until 1930. The new Section 92A in our Constitution, created by the amendment of 1982,

establishes beyond doubt the resource jurisdiction of provinces as a general provision. The specific constitutional arrangement for any new provinces could, however, be varied, just as it was in 1905. Ownership and management of resources or the receipt of revenue from them are not a necessary attribute of provincial status.

On the other hand, local control of any one or more of these resource powers or benefits could be transferred by the federal government to a territory whenever and to whatever extent it wanted. It is a matter for federal decision, dependent on policy and on appropriate provision. Mr. Crombie's statement of 6 February 1985 in Yellowknife on territorial participation in the management of natural resources and the sharing of revenues is evidence of this fact. He held out the prospect of discussions with the territorial governments to establish a suitable regime.

Analysis of the character and of the implications of provincial status within our federal system, as it has developed in Canada, makes clear some of the problems it would present for one, two, or three territories in the North, given that Nunavut may emerge as a new territory in the next few years. The greatest single problem is clearly that of finance.

In assessing the likelihood of a continuing financial problem arising from provincial status, one must first ask whether the attributes that today make the North so costly an area are likely to change. There is little

reason to think they will. None of the features that makes costs in the North so different from those in the South has changed significantly in the thirty-two years since I became Commissioner of the Northwest Territories in 1953 despite great improvements in transportation, in communications, and in the availability of construction, commercial, and other services. I suspect that none is likely to be markedly different for decades to come, if ever. The hostile climate, the vast distances, the sparse populations, the need to import so much for infrastructure and for living, all will continue.

A second question is whether the narrow resource base of the territories is likely in the future to provide the stability of economic performance on which successful provincial operation, year in and year out, depends.

The history of Yukon, with its boom and bust cycles since 1898, is not reassuring. The dependence of the territories on non-renewable resources for development and for new sources of revenue is too great for comfort in a world where demand and price can oscillate as greatly as we have seen in recent years. The costs of resource development and production in the North are high and will stay high for the same reasons that costs in general are high. It would be taking an irresponsible risk to assume that revenues from them can provide either the amount or the stability of revenue needed to ensure the financial

security on which true independence for northern governments in the future must rest.

The difficulties of resource development as a source of revenue for future northern governments will be increased as more agreements are entered into with the aboriginal people along the lines of the agreement with the Committee for Original Peoples' Entitlement. Under it, the Inuvialuit, the Inuit of the western Arctic, will receive title to 35,000 square miles of land. Of that total, they will own both surface and subsurface rights to 4,200 square miles selected near each of the six communities in the settlement region. Another 800 square miles will be held as a protected, non-development area. The agreement negotiated with the Council for Yukon Indians has different but comparable provisions for lands in Yukon. Similar agreements will probably be negotiated with the Dene of the Northwest Territories, with the Métis, and with the large majority of the Inuit of the central and eastern Arctic who are not included in the COPE settlement. These agreements will cover very large areas of the territories.

The Department of Indian and Northern Affairs has pointed out the implications of such settlements of native land claims for future resource development:

The Agreement-in-Principle with the Council for Yukon Indians and, to an even greater extent, the Committee for Original Peoples' Entitlement (COPE) Final Agreement provide natives with a significant role in

reviewing development proposals and formulating recommendations to the Minister of INAC (Indian and Northern Affairs Canada) on whether or not activities should proceed and, if so, on what basis. So far, both Tungavik Federation of Nunavut (TFN) in the Eastern Northwest Territories and the Dene/Métis in general discussion indicate a similar desire on their part to exercise a controlling voice in management structures and to impose considerably more stringent tests of environmental and social acceptability of development proposals.

Based on the example of the COPE settlement and the Council for Yukon Indians negotiations there may be extensive private ownership of former Crown lands in the North. Many of these privately-held lands might include freehold mines and minerals.

On these lands, it is possible that claimants will seek higher surface land rentals and royalties for exploitation of subsurface resources, and possibly more stringent conditions related to environmental impact mitigation and physical site restoration. In addition, claimants may seek related financial benefits in the form of employment, equity participation and entrepreneurial concessions. Such features are in large measure beyond the control of government since they are attached to the nature of private ownership of land and, where applicable, subsurface resources as well.¹⁴

What the department is saying in the final paragraph is that the native groups whose claims will be settled under the agreements may well want more for resource development on their lands than the federal or territorial governments might want for development on other land. They may also impose conditions requiring the employment of Inuit, Indian, or Métis people. They

may want a share of ownership in whatever development they agree to on their lands.

There is nothing surprising about these probable results. The whole purpose of the agreements is to permit native peoples to protect their environments against degradation by resource development and to permit them to share in the financial benefits of whatever development does occur. Both aspects of arrangements to achieve these results are, however, likely to add to costs for developers. Both aspects will also reduce the revenue potential for governments of resource developments on such lands.

In addition to the land settlements, allocations of northern lands for wildlife and migratory bird sanctuaries, national parks, and possible International Biological Program Sites will affect the development of resources. In total, as much as 15 per cent of the area of northern Canada could be excluded from mineral exploration and development for these purposes.¹⁵ Again, there should be no cause for surprise. Northern Canada provides the nesting area for a large proportion of the species of migratory birds of the American hemisphere. Great areas of land must also be held undisturbed if the much-reduced caribou herds, on which many Indians and Inuit depend for their livelihood, are not to be further endangered.

The special land provisions are in the interests of the aboriginal peoples and, more broadly, in the national interest. The provisions will, however,

diminish the extent to which the development of non-renewable resources in the North can be expected to provide a solution to the financial problems of governments there.

What, then, are the options for the North?

The foundation of future options, I would suggest, should be a special status for the territories, possibly designated "Autonomous Federal Territories" to emphasize the completeness of the self-government to be accorded them within the Canadian federal system. A separate enactment would set out the structure of government designed to meet the circumstances and needs of each territory. There would be no power vested in any minister of the federal government, as in the present acts, to intervene in the administration and operation of territorial affairs. Remaining for consideration would be the question whether any reserve power by the Governor in Council of Canada would be necessary in any defined circumstances pertaining to national interests and concerns in the North.

To provide legal and constitutional security for the autonomy of the territories, it might be desirable to attach the territorial enactments to the Constitution as Schedules. They would thus be recognized in the Constitution itself. There could be provision by formal amendment of the Constitution Act, 1982, to make the procedure for amendment of any of those enactments similar to the present Section 43, which governs

amendments that apply to a single province.

Section 43 now reads:

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

- (a) any alteration to boundaries between provinces, and
- (b) any amendment to any provision that relates to the use of the English or the French language within a province, may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

A section on "Autonomous Federal Territories" might refer to "an amendment of Schedule X, Y or Z" and provide that such an amendment "may be made by proclamation of the Governor General" only where so authorized "by legislation of the Parliament of Canada in which it is stated that the Legislative Assembly of the Territory in question has passed a resolution of agreement." An amendment to insert the necessary new section in the Constitution Act would require the unanimous consent of the provinces under Section 41 of the act, but there is no reason to think it would not be forthcoming. The provinces would have no interest in objecting. Once the amendment was made, no further action by the provinces would be required, nor would they be concerned with or about territorial arrangements. The terms of the new constitutional

provision would thereafter operate to protect each territory against any change in its own scheduled enactment, even by the Parliament of Canada, with which its Legislative Assembly did not agree.

The essential point is that it is not impossible to provide full self-government for the territories on a secure legal and constitutional basis. Nor is it impossible, on such a basis, to have a wide variety of governmental structures that could respond to the special needs of the two or three territories that will exist in the future. The problem appears to be whether there can be the degree of consensus that has thus far been considered necessary before action is taken by the responsible territorial and federal authorities.

Some Problems of Concept

It is greatly to the credit of the people of the territories that they have handled with such moderation and civility the widely differing interests at issue among so many disparate groups. There has been growing understanding about the different values of the many ethnic and linguistic elements, about the reality of collective rights, and about the need to make significant compromise if action is to be possible on the basis of general acceptance. One cannot help wondering, however, if the concepts of consensus and self-determination, so admirable in principle, may not have to be subject to limitation to avoid frustrating any actions that may be desirable under a third concept:

that of the general interest.

The report of the Constitutional Alliance of the Northwest Territories of 22 February 1985, dealing with the hoped-for agreement on the boundary for division of the Northwest Territories, contemplated submitting the boundary, if agreed on, "to the public for ratification." It soon became clear that the "agreement" had not passed the first hurdle of acceptance by the Inuvialuit or by the Western Constitutional Forum. The Inuvialuit were, in effect, being offered a form of self-determination: into which territory did they wish to go with the land that was traditionally theirs? They are a group of some 2,500 Inuit. It is quite possible that their determination could be contrary to the wishes and interests of the majority of the 26,000 or so white, Indian, and Métis people in the west if they decided to become part of Nunavut. If they opted the other way, however, their decision might be contrary to the wishes and interests of the 14,000 or so Inuit in Nunavut outside the Inuvialuit area. It is not at all apparent how justice or equity can be served if the self-determination of 2,500 people is allowed to take automatic precedence over the interests of ten times or six times that number who may see their interest differently. It seems clear that the generous principle of self-determination cannot be considered conclusive or adequate. It is distinctly possible that it will be contrary to the general interest or to good community relations to attempt to apply it in any formal way.

As to consensus, the obverse of the total agreement it involves can be the delivery of the majority of any group into the hands of a determined minority. The price of consensus may be for a reasonable majority either to accept views with which they do not agree or, alternatively, to see the action they want frustrated and made impossible to realize. Again, the general interest may find itself sacrificed to an unbending application of another concept.

There are problems about political leadership, about representative democracy, and about the identification of the general interest with a majority view. All require careful handling in a community as various and as complicated as that in the North. There are, however, equally great problems about consensus, self-determination, and ratification by referendum.

Further discussions and negotiations within both territories will undoubtedly take place. It is profoundly to be hoped that they will solve the many problems still at issue. If not, political leaders in the ethnic and regional groups, in the elected representation in the territories, and in the federal government may have to consider whether there are not limits to the load that direct democracy and total agreement can be expected to carry in matters as complex and with implications as important to Canada as those now at issue in the North. Unless that is done, the result may be frustration and continuation of the status quo--something that very few in the North really want.

APPENDIX: THE TERRITORIAL NEEDS AND THE FEDERAL-PROVINCIAL FINANCIAL REGIME

For purposes of clarity and brevity the text focuses on the main point of "difference" between the financial arrangements for the territories and those for the provinces: the deficit grants versus equalization. Readers who are interested in a comparison of the total result of federal fiscal transfers for the territories as compared with the provinces receiving equalization may find the figures in Table 1 helpful.

The items in Table 1 indicated as "Tax" are the values of "points" of income tax that were made available to the provinces, in addition to amounts of cash, under the "Established Program Financing" legislation. It provides assistance to the provinces and the territories for the costs of medicare, hospital insurance, extended health care, and post-secondary

education. In the case of Quebec additional tax points provide the equivalent of the financial assistance in the form of cash that it ceased to receive when it contracted out of certain shared-cost programs in the 1960s. (Other provinces receive their assistance as cash.)

The main point in this table showing the total cash and tax transfers is that, with the exception of Yukon in 1982-1983, territorial dependence on federal transfers has ranged from 63.4 per cent to 70.2 per cent of gross revenues. The most dependent provinces are Newfoundland and Prince Edward Island. Their dependence in the past two fiscal years has ranged from 42.9 per cent to 46.3 per cent of their gross revenues. In short, territorial dependence has been approximately 50 per cent greater than that of the most dependent provinces.

The fact that the territories have not had revenue from their resources while the provinces have does not explain the difference. None of the provinces that receive equalization gets any significant proportion of its revenues from resources. The highest is Newfoundland, where resource revenues in the past ten years have constituted 0.9 to 2.1 per cent of its gross revenues. Manitoba has received comparable proportions. The four other provinces receiving equalization have all received lower proportions of revenue from their resources. The situation of provinces in the North would be comparable at the

present time. The federal government revenues in recent years from northern resource development have been minimal. If they were collected by northern governments they would form a very small proportion of total revenues. With the present high cost of resource development in the North, there seems little reason to believe that the development could, in the foreseeable future, provide the basis for any substantial revenue for governments there.

The various indices of territorial dependence on federal transfers that have been referred to in this study are summarized in Table 2.

TABLE I

Federal Cash and Tax Transfers to Provinces Receiving Equalization
and to the Territories, as a Percentage of Gross General Revenues,
1982-1983 to 1984-1985
(dollar numbers in millions)

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Man.	Sask.	N.W.T.
1982-1983								
Federal transfers ¹								
Cash	874.3	200.5	1,019.8	931.6	5,062.8	877.9	87.8	321.6
Tax	63.3	12.6	115.4	85.9	2,334.9	171.5	6.8	9.6
Total	937.6	213.1	1,135.3	1,017.5	7,397.7	1,049.4	94.5	331.2
Gross general revenues ²	1,863	414.8	2,721	2,124	26,535	3,705	181.9	480
Total transfers as a % of gross general revenues	50.3	51.4	41.7	47.9	27.9	28.3	52.0	69.0
1983-1984								
Federal transfers ¹								
Cash	844.4	190.8	1,022.2	908.9	5,031.2	914.7	110.0	376.0
Tax	69.3	13.9	126.1	93.8	2,569.5	187.0	7.6	10.5
Total	913.7	204.7	1,148.3	1,002.7	7,600.7	1,101.7	117.6	386.5
Gross general revenues ²	2,020	477.1	2,966	2,354	28,596	4,545	185.5	570.7
Total transfers as a % of gross general revenues	45.2	42.9	38.7	42.6	26.6	27.2	63.4	67.4
1984-1985								
Federal transfers ¹								
Cash	907.4	205.7	1,078.6	957.0	5,604.1	1,024.4	124.3	414.6
Tax	74.8	15.9	141.5	104.9	2,689.2	205.7	6.7	13.2
Total	982.2	221.6	1,220.1	1,061.9	8,293.3	1,230.0	131.0	427.8
Gross general revenues ²	2,224	478.9	3,297	2,616	30,743	4,366	200.7	609.1
Total transfers as a % of gross general revenues	44.2	46.3	37.0	40.6	27.0	28.2	65.3	70.2

Sources: 1. For all federal transfer data, Treasury Board of Canada, Fact Sheet No. 5, "Federal Transfers to the Provinces, Territories and Municipalities" (Department of Finance, June 1985).

2. Statistics Canada, Consolidated Provincial-Local Government Finance (Cansim, June 1985).

TABLE 2

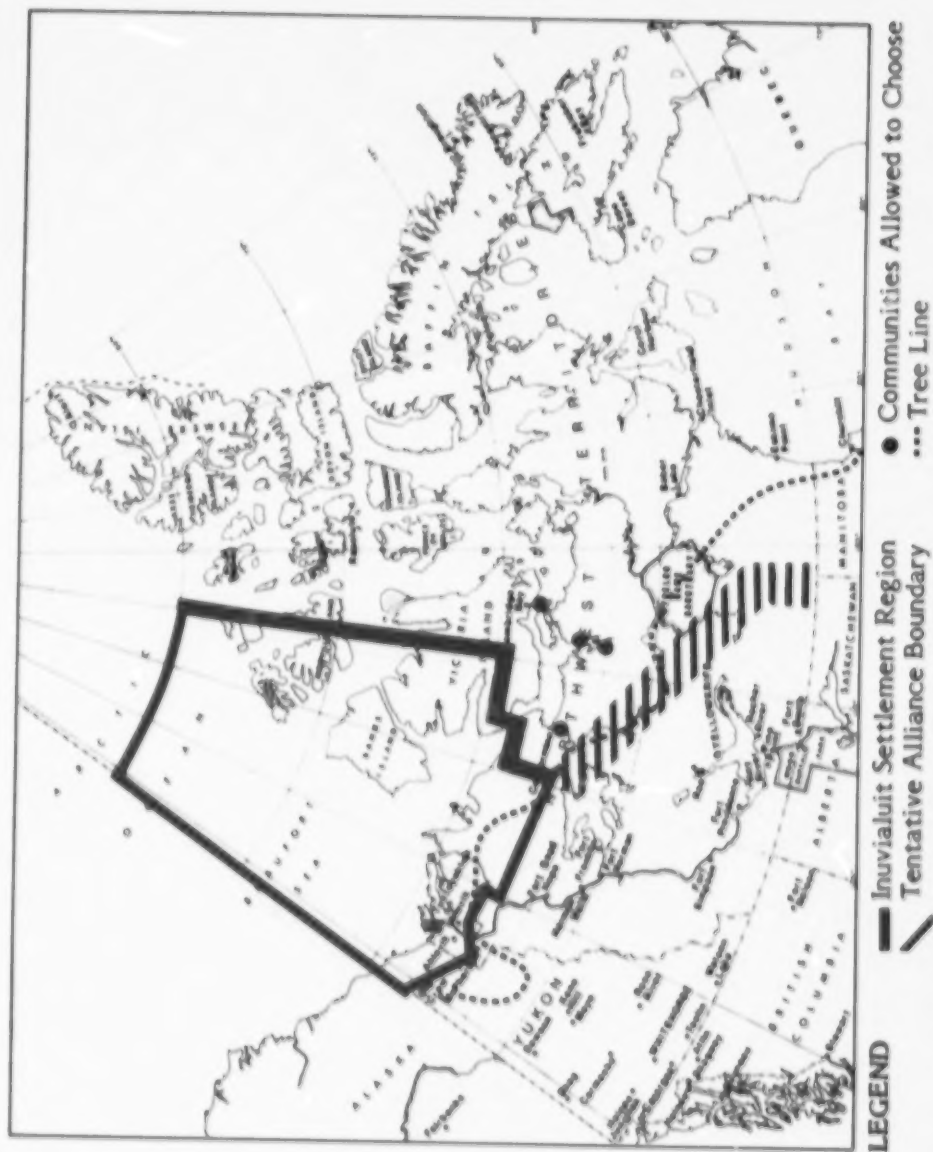
Degree of Provincial and Territorial Reliance on Federal Transfers,
as Measured by Various Indices, 1984-1985¹

	Nfld.	P.E.I.	N.S.	N.B.	Que.	Man.	Yukon	N.W.T.
Total federal cash and tax transfers as a % of gross general revenues	48	50	40	44	29	30	72	74
Total federal cash transfers as a % of gross general revenues	45	47	35	40	20	25	69	72
Equalization (or deficit grant) as a % of gross general revenues ²	26	27	19	20	10	11	55	68
Total federal cash transfers per capita (\$)	1,726	1,777	1,339	1,485	938	1,045	6,279	8,899
Equalization (or deficit grant) per capita (\$)	1,017	1,027	709	749	465	455	5,045	7,879

Sources: 1. The figures for the amounts of federal transfers are as provided by the Department of Finance, Ottawa, July 1985. The figures for the gross general revenues of the provinces to which such transfers are related are from Statistics Canada.

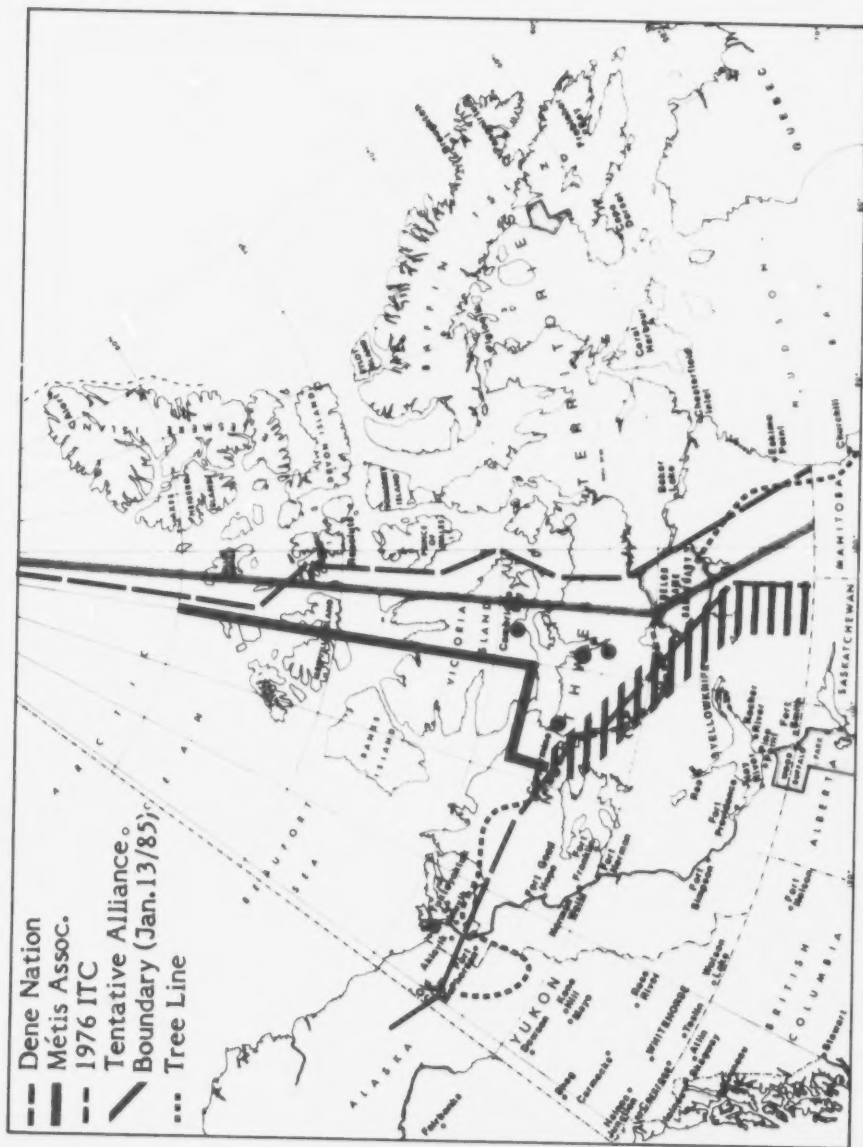
2. These figures vary slightly from those in the 1984-1985 column of the table on page 32 because they were provided after more complete figures became available for that fiscal year.







BOUNDARY POSITIONS





NOTES

1. The figures here are based on Statistics Canada, Catalogue 92-911, Population by Ethnic Origin (Ottawa, February 1984), and Statistics Canada Daily of 1 February 1983. Questions concerning ethnicity in the 1981 census were directed to a 20 per cent sample of households and do not include persons then inmates of institutions in the two territories. The figures for Yukon natives supplied by the Council for Yukon Indians are based on an enrolment that lists the people entitled to be beneficiaries under the Yukon native land claims.
2. The Honourable David Crombie, Statement to the Legislative Assembly of the Northwest Territories, Yellowknife, 6 February 1985.
3. Ibid.
4. Political Development in Nunavut, a report for the board of directors of Inuit Tapirisat of Canada, September 1979.

5. Western Constitutional Forum, Western Constitutional Forum: An Overview, 26 October 1984 (mimeographed).
6. Council for Yukon Indians, Submission to the Special Committee on Indian Self-Government, 10 May 1983, p. 7.
7. Parliament, House of Commons, Special Committee on Indian Self-Government, Indian Self-Government in Canada (Ottawa, 20 October 1983), pp. 62-63.
8. Report of the Royal Commission on Dominion-Provincial Relations (the Rowell-Sirois Commission), 1940, Book II, p. 126.
9. Treasury Board News Release, 26 February 1985, Fact Sheet No. 5. This figure may be subject to adjustment since it is an estimate and, to some degree, subject to agreement on the several elements going into it.
10. The new "Fixed Tax Rate Formula" provides that the federal grant paid to each territorial government in any given year will be the difference between two amounts designated as A and B. A is the prospective expenditure side. It is defined as the gross expenditures of each territory in the base period (the fiscal year 1982-1983) escalated by a three-year moving average of the rate of growth in provincial plus local expenditures for Canada as a whole. B is the prospective revenue side calculated on the basis of "eligible revenues." Eligible revenue for each territory includes federal transfer payments under the specific purpose transfers plus the revenues the territory can raise for itself, also related to the 1982-1983 base year. That calculation is the yield of 1982-1983 tax rates and other financial recovery rates applied to the value of retail sales, personal incomes, and other revenue sources in the territory for the year in question.

11. Department of Finance, Ottawa. The 1984-1985 figures were not final but were the most complete available when the table was prepared in April 1985.
12. For a fuller treatment of indices of territorial needs and of the degree of dependence on federal fiscal transfers by the provinces now receiving equalization and by the two territories, see the Appendix to this study.
13. Report of the Royal Commission on Dominion-Provincial Relations, Book II, p. 125.
14. Department of Indian and Northern Affairs, The Northern Mineral Sector: A Framework for Discussion (Ottawa, March 1985), p. 33.
15. Ibid., p. 31.



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Northern Provinces: a mistaken goal

Gordon Robertson

Political and native group leaders in Yukon and the Northwest Territories seek change in the governmental structures there. They see complete self-government as a right and provincial status as a normal expectation. The Indians, Inuit, and Métis of the North want political systems that would embody and protect their cultures. Division of the NWT into two new territories is advocated. But are the territories right to seek provincial status? Would they be better off as provinces?

Gordon Robertson, formerly Commissioner of the Northwest Territories and Deputy Minister of Northern Affairs and National Resources, believes they would not.

Robertson shows how the federal-provincial fiscal regime is designed to give financial security to the ten existing provinces, but would not do so for the North. He also describes why the present ten might not see it in their interests to agree to establish two or three new provinces.

What, then, are the options for the North? Robertson proposes a special status, "Autonomous Federal Territories." Each territory would have complete self-government, with a system related to its own ethnic, linguistic, and other needs. Each territorial constitution would become a Schedule to the Constitution Act of Canada, with no amendment except after territorial agreement.

ISBN 088645 027 6

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